

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF,)
)
K. OH and Q. ZOU,) OTA NO. 21057892
)
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 APPELLANT.)
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TRANSCRIPT OF ELECTRONIC PROCEEDINGS

State of California

Tuesday, June 28, 2022

Reported by:
ERNALYN M. ALONZO
HEARING REPORTER

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Transcript of Electronic Proceedings,
taken in the State of California, commencing
at 1:08 p.m. and concluding at 1:26 p.m. on
Tuesday, June 28, 2022, reported by Ernalyn M.
Alonzo, Hearing Reporter, in and for the State
of California.

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APPEARANCES:

Panel Lead: ALJ SARA HOSEY

Panel Members: ALJ ANDREA LONG
ALJ JOHN JOHNSON

For the Appellant: K. OH
Q. ZOU

For the Respondent: STATE OF CALIFORNIA
FRANCHISE TAX BOARD

LEO CRISTOBAL
MARIA BROSTERHOUS

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I N D E X

E X H I B I T S

(Appellant's Exhibit 1 was previously received at the prehearing conference.)

(Appellant's Exhibit 2 was received on page 7.)

(Department's Exhibits were previously received at the prehearing conference.)

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California; Tuesday, June 28, 2022

1:08 p.m.

JUDGE HOSEY: We are going on the record.

This is the Appeal of Oh and Zou, Case Number 21057892. Today is June 28th, 2022, and it's 1:08 p.m. The hearing is being held virtually via Webex with the consent of the parties. I am lead Administrative Law Judge Sarah Hosey, and with me today are Judge John Johnson and Judge Andrea Long.

Can I have the parties please state their names for the record, starting with Mr. Oh.

MS. ZOU: You're muted.

JUDGE HOSEY: Oh, Mr. Oh, can you hear me?

MR. OH: Yeah. Sorry. I talked to myself. This is Kazuki Oh.

JUDGE HOSEY: Thank you.

MS. ZOU: This is --

JUDGE HOSEY: Go ahead.

MS. ZOU: Okay. Yeah. Just wanted to, you know, I sincerely want to apologize for the delay.

JUDGE HOSEY: No. That's okay. Can you -- we're going to -- can I just get your name for the record? And then I will let you know when you can start your statement. I'll swear you in first, and then you'll

1 start.

2 MS. ZOU: Okay. My name is Qi Zou, Q-i Z-o-u.
3 Yeah.

4 JUDGE HOSEY: Okay. Thank you. Can I get --

5 THE STENOGRAPHER: Judge Hosey, I'm unable to
6 hear you.

7 JUDGE HOSEY: Can you hear me now?

8 THE STENOGRAPHER: Yes. You keep going in and
9 out.

10 JUDGE HOSEY: Okay. I will sit really close
11 here.

12 Okay. Can I get the introductions for the
13 Franchise Tax Board.

14 MR. CRISTOBAL: Yes. Good afternoon. This is
15 Leo Cristobal, Tax Counsel, representing Franchise Tax
16 Board.

17 MS. BROSTERHOUS: And Maria Brosterhous also with
18 the Franchise Tax Board.

19 THE STENOGRAPHER: Judge Hosey, are you on mute?

20 JUDGE HOSEY: Can you hear me? I'm not on mute.
21 Can you hear me?

22 THE STENOGRAPHER: Yes. I can hear you now.

23 JUDGE HOSEY: Okay. All right. I will stay
24 really close to the microphone here.

25 The issue, as agreed upon in the prehearing

1 conference minutes and orders issued on June 8th, 2022, is
2 whether Appellants have met their burden of proving error
3 in FTB's 2015 proposed assessment of tax disallowing Paid
4 Family Leave income; and whether Appellants have
5 established any basis to abate interest.

6 We marked Exhibits 1 for Appellant and A through
7 G for Respondent at the prehearing conference held on
8 June 7th, 2022. No objections were raised by either
9 party, and the exhibits were admitted into the record per
10 the prehearing conference minutes and orders issued on
11 June 8th, 2022.

12 We have premarked Appellants' Exhibit 2, a power
13 point, provided June 14th, 2022. No objections were
14 raised, and Exhibit 2 is now admitted as evidence into the
15 record.

16 (Appellant's Exhibit 2 was received in
17 evidence by the Administrative Law Judge.)

18 Okay. We are now moving to Appellants'
19 presentation. So I will start by swearing in both
20 Appellants.

21 Mr. Oh, I'll start with you. Can you please
22 raise your right hand?

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KAZUKI OH,

produced as a witness, and having been first duly sworn by the Administrative Law Judge, was examined and testified as follows:

JUDGE HOSEY: Thank you.

Ms. Zou, I'm going to swear you in now. Can you please raise your right hand.

QI ZOU,

produced as a witness, and having been first duly sworn by the Administrative Law Judge, was examined and testified as follows:

JUDGE HOSEY: Okay. Please begin your statement.

MR. OH: So we start, right? Okay.

Christine [sic], would like to say something first --

MS. ZOU: Yeah.

MR. OH: -- or I should go first?

MS. ZOU: Yeah. Thank you.

PRESENTATION

MS. ZOU: Thank you, Judges, for time. So we just wanted to first, like, you know, sincerely apologize for the delay. And we decided to pay for the penalty and

1 explain to you, if we would get the chance. So just in
2 principle, you know, we were very swamped with listing and
3 moving out of the house at the time the letter was mailed
4 to us. And to be honest, we didn't see the notice. And
5 my husband took care of the return -- the tax return, so
6 we'll have him explain to you in detail then.

7 MR. OH: I -- I think you see my screen here. I
8 put a couple of slides putting those for example. Let me
9 go to it.

10 So this is the history of this November 15th tax
11 return notice from FTB. You can see here, actually.
12 First, I want to show you how we were notified at the
13 time. So first notice we received in 2019 July, which is
14 three years and three months after filing the tax return.
15 So we have another notice, actually, in 2021, April, which
16 is five years after.

17 So the third and fourth notification were
18 received -- I mean, were delivered to us, but we didn't
19 see those notifications because of moving. That's --
20 Christine just mentioned earlier. So before we received
21 the final that's due in 2021, April, then that was
22 delivered to our new address finally, and we paid within a
23 month in May 21st, actually. So this whole, you know --

24 JUDGE HOSEY: Sorry to interrupt you. Can you
25 hear me?

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MR. OH: Yes.

JUDGE HOSEY: I just want to make sure that you're aware that this is publicly viewable. So I want you to know that the panel has this information when you emailed it to us. I mean, if you don't want to share it, we can follow along on our end, and FTB has it as well. So you don't have to share your screen if you don't want to have this --

MR. OH: I see.

JUDGE HOSEY: -- if you don't want this information on the live stream.

MR. OH: No. This is fine. This is -- okay. So this is, you know, public information. It's -- it's okay.

JUDGE HOSEY: Okay. Just checking. Thank you.

MR. OH: Okay. Thank you.

MS. ZOU: It's fine. We're not very experienced dealing with, you know, tax auditing.

MR. OH: No, no. We expect that you can see here. We're not hiding anything. We're just talking about the truth.

JUDGE HOSEY: Okay. I just wanted to make sure you were comfortable with it. Yes, I understand. Thank you.

MR. OH: Thank you so much. Yeah.

So basically, you know, for us, you know, this --

1 the time frame actually doesn't make -- make sense for us
2 to pay such a large penalty at the end, basically the
3 interest. So, you know, somehow at the time we had a
4 newborn baby, and there's some -- you know, we always
5 utilize the October tax to file the tax return. And there
6 was an error. I think that's a human error somehow when I
7 filed the case, and I didn't know.

8 Then later, you know, when we find out this
9 error, but we -- the first of all we inquired with the
10 letter saying, "Please describe what the issue is." So
11 then after, you know, five years later we got, you know,
12 kind of, a notification that started to inquire for
13 everything. Then we realized the issue, then we paid the
14 amount. So basically you can tell that if we know, you
15 know, there's an error earlier, we could pay earlier. And
16 we, you know, not necessarily end up paying the, you know,
17 the large penalty.

18 MS. ZOU: Sorry. We didn't do it on purpose. We
19 didn't know, actually. It's our fault but, you know, it's
20 our first time. And we, you know, as mentioned we didn't
21 do it on purpose. So hopefully you could give us a chance
22 to, you know, waive the penalty or do something to make up
23 for it. It will be appreciated.

24 MR. OH: So let's just go to the tax balance. So
25 here's the invoice. Actually that's the interest this

1 \$3,200 here. That's what we're talking about actually. I
2 think actually the tax return portion, I think we -- we
3 didn't really hire a CPA to work for everything, but I
4 think that's correct amount from FTB. We agree with it.
5 But interest, actually, it doesn't make sense for us to
6 pay the, you know, five-years interest to, you know, which
7 was not really notified on time. So here's the history
8 how we, you know, got, you know, use our old address.
9 This proved we moved by the time. You know, we didn't get
10 the notice on time. Okay.

11 So this is how we paid -- actually, this is the
12 address change notice. This just proved, you know, we
13 didn't get the notice even though we have the new, you
14 know, document forward to the new address. But the
15 notification was, you know, some months later. It's after
16 we have the six-month window forwarding the mail to our
17 new address.

18 So that's pretty much all for us. We just want
19 to tell the truth. We're not hiding anything. This was
20 a -- for us it's not -- it doesn't make sense for us to
21 pay the five-years interest. That's pretty much all.

22 Do you want to add something, Christine?

23 MS. ZOU: No. Just it's about the truth, yes.

24 MR. OH: Okay. Thank you for your time.

25 JUDGE HOSEY: Oh, great. Thank you both for your

1 time. I'm going to see if Franchise Tax Board has any
2 questions.

3 Mr. Cristobal?

4 MR. CRISTOBAL: This is Leo Cristobal from
5 Franchise Tax Board. We do not have any questions at this
6 time.

7 JUDGE HOSEY: Okay. I'm going to check with my
8 panel to see if they have any questions, starting with
9 Judge Johnson.

10 JUDGE JOHNSON: This is Judge Johnson. No
11 questions. Thank you.

12 JUDGE HOSEY: Thank you.

13 This is Judge Hosey again. I'm going to check in
14 with Judge Long.

15 JUDGE LONG: This is Judge Long. I have no
16 questions. Thank you.

17 JUDGE HOSEY: Thank you.

18 Okay. This is Judge Hosey again. Mr. Cristobal,
19 are you ready to begin your presentation?

20 MR. CRISTOBAL: Yes.

21 JUDGE HOSEY: Please begin.

22 MR. CRISTOBAL: I'm sorry. I missed that last
23 part.

24 JUDGE HOSEY: Oh, I just said please begin when
25 you're ready.

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MR. CRISTOBAL: Okay. Sorry about that.

PRESENTATION

MR. CRISTOBAL: So good afternoon. My name is Leo Cristobal, and I am tax counsel for and representative Respondent Franchise Tax Board. And with me today is Maria Brosterhous, also tax counsel for Respondent.

The first issue here is whether Appellants have met their burden of proving error in Respondent's proposed assessment of tax. Appellants are California residents who filed a California return reporting W-2 wage income. And despite their W-2's reporting the same amount of federal wage income and state wage income, Appellants subtracted the entirety of their wage income on Schedule CA of their California return.

It is a well-settled principle that deductions and credits are a matter of legislative grace and taxpayers bear the burden to point to an applicable statute or provide competent evidence that they're entitled to claim deductions. It has also been consistently held that unsupported assertion are not sufficient to satisfy a taxpayer's burden of proving that a deficiency assessment by Respondent is in error.

In this case, Respondent reviewed Appellants' California return and determined that they incorrectly subtracted their wage income on Schedule CA. Respondent

1 sent Appellants a Notice of Proposed Assessment and also
2 in its disposition letter and again in its opening brief.
3 Respondent requested that Appellants provide evidence
4 establishing entitlement to subtracting their wage income
5 on Schedule CA.

6 However, to date Appellants simply have not
7 provided substantiation showing that their wage income
8 should be subtracted from their California income.
9 Accordingly, Appellants have not carried their burden of
10 proof to demonstrate error in Respondent's assessment in
11 the assessment of tax to be sustained.

12 Now, the second issue here is whether Appellants
13 have established any basis to abate interest. The Office
14 of Tax Appeals has consistently held and reaffirmed that
15 interest is not a penalty. Interest is mandatory
16 compensation for money that should have been paid to the
17 State, and there is no reasonable cause exception to the
18 imposition of interest. In certain circumstances
19 Respondent may abate interest, pursuant to California
20 Revenue & Taxation Code Section 19104, if the interest is
21 attributable to an unreasonable error or delay by
22 Respondent in the performance of a ministerial or
23 managerial act.

24 In this case, Appellants contend that they were
25 prevented from paying their assessment in a timely manner,

1 and argue that interest should be abated due to a delay in
2 receiving notifications. However, the record shows that
3 all relevant correspondence was properly mailed to
4 Appellants at their new address. And unfortunately,
5 Appellants have not demonstrated that any interest is
6 attributable to an unreasonable error or delay by
7 Respondent in the performance of a ministerial or
8 managerial act.

9 And, therefore, abatement is not warranted under
10 the interest abatement statute. Accordingly, Appellants
11 have not established any basis to abate interest.

12 Thank you. And I am happy to answer any
13 questions at this time.

14 JUDGE HOSEY: Thank you, Mr. Cristobal.

15 I'm going to go ahead and check in with
16 Mr. Zou -- I'm sorry -- Mr. Oh and Ms. Zou to see if they
17 have -- want to make a final statement or address anything
18 further.

19

20 CLOSING STATEMENT

21 MR. OH: So I think Mr. Lee said the notification
22 was sent to the right address, but we didn't even get it.
23 I don't know how it's delivered to us. So -- and the --
24 from the record in your system it's showing that's a
25 couple of years later you sent the notification. That's

1 already too late even though you sent to the right
2 address, right.

3 And we -- we didn't really, you know, receive the
4 notice in our new address. But I -- even though you say
5 it was sent to us, but notification was already too late.
6 That's my view. And maybe going through the pandemic
7 thing it takes longer time, but this is not too, you know,
8 realistic.

9 MS. ZOU: Right. Interest rate already incurred,
10 you know. It's kind of delayed for, like, a few years as
11 the time we received the notice. I'm not sure if we
12 should be responsible for that part of interest caused by
13 the delay. Yeah.

14 JUDGE HOSEY: Okay. Thank you, Ms. Zou and
15 Mr. Oh.

16 I'm going to go ahead and check with my panel to
17 see if they have any questions, starting with
18 Judge Johnson.

19 JUDGE JOHNSON: This is Judge Johnson. No
20 questions. Thank you.

21 JUDGE HOSEY: Thank you.

22 This is Judge Hosey again. Checking in with
23 Judge Long.

24 JUDGE LONG: This is Judge Long. I have no
25 questions. Thank you.

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JUDGE HOSEY: Thank you.

This is Judge Hosey again. It looks like we are ready to submit the case. We have your arguments and the documents, and we're going to go ahead and close the record.

This concludes the hearing, and the Judges will meet and decide the case based on the documents and arguments presented. We will aim to send both parties our written decision no later than 100 days from today.

The hearing is now adjourned. Thank you everyone.

(Proceedings adjourned at 1:26 p.m.)